

REPORTS AND NOTES OF CASES

Dominion of Canada.

EXCHEQUER COURT.

BURBIDGE J.]

[Jan. 11.]

GOODWIN v. THE QUEEN.

Public works—Contract—Progress estimate—Satisfaction of engineer—How to be expressed.

Claim for moneys alleged to be due upon a contract with the Crown for the construction of a public work. By clause 25 of the claimant's contract it was, inter alia, provided that certain monthly cash payments should be made to the contractor as the work progressed, "on the written certificate of the engineer that the work for, or on account of which the certificate is granted, has been duly executed to his satisfaction."

Held, (following *Murray v. The Queen*, 26 S.C.R. 203) that unless the certificate expressly states that the work for which it had been given had been executed to the satisfaction of the engineer, it does not comply with the requirements of the contract.

Osler, Q.C., and *A. Ferguson*, Q.C., for the claimant.

The Solicitor-General, *C. H. Ritchie*, Q.C., and *F. H. Chrysler*, Q.C., for defendant.

BURBIDGE, J.]

[Jan. 18.]

THE QUEEN v. ST. LOUIS.

Prerogative—Res judicata—Effect of, when pleaded against the Crown.

The doctrine of res judicata may be invoked against the Crown; and where a former judgment is pleaded to an information by the Attorney-General, such plea operates in the same way as in suits between subject and subject.

S., the defendant here, had first brought a petition of right seeking to recover certain moneys alleged to be due to him upon a contract. With its defence to the petition the Crown filed a counter-claim for the return of a larger sum of money than S. claimed in his petition, and which the Crown alleged had been improperly paid to him. By consent this counter-claim was withdrawn before judgment. The Exchequer Court dismissed the petition on the ground that S.'s claim was tainted with fraud. On appeal to the Supreme Court this judgment was reversed and S.'s petition allowed. The Crown then exhibited an information to recover the amount claimed by way of counter-claim to the original action.

Held, that the issues arising on the information being the same as those decided on the petition, the defendant's plea of res judicata must prevail.

The Solicitor-General, *Osler*, Q.C., and *Hogg*, Q.C., for the plaintiff.

C. A. Geoffrion, Q.C., and *J. U. Emará*, for the defendant.